



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/155709

PRELIMINARY RECITALS

Pursuant to a petition filed February 25, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on March 25, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly imposed a tax intercept.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Belinda Bridges, HSPC Sr.
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On August 22, 2013, Milwaukee Enrollment Services (the agency) sent Petitioner a Notification of FoodShare Overissuance, Claim Number [REDACTED], indicating that she was over-issued FoodShare benefits in the amount of \$3,273.00 for the period of October 1, 2012 to June 30,

2013. Overpayment worksheets were attached to the overpayment notice. (Exhibit 2, p. 13 and pg. 15-17)
3. The agency sent Petitioner a repayment agreement on September 4, 2013. (Exhibit 2, pgs. 18-20)
 4. The agency sent Petitioner dunning notices (reminders) about the overpayment on October 2, 2013, November 4, 2013 and December 3, 2013. (Exhibit 2, pgs. 10-13)
 5. On January 17, 2014, the Public Assistance Collections Unit (PACU) sent the Petitioner a notice indicating that her state tax refunds would be intercepted to satisfy the over-issuance. (Exhibit 2, pg. 5)
 6. On February 21, 2014, PACU sent the Petitioner a notice that her Federal tax refunds would be intercepted to satisfy the remaining balance on the over-issuance (\$3,163.00). (Exhibit 2, pgs. 3 and 4)
 7. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 25, 2014. (Exhibit 1)

DISCUSSION

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a) (2).

A Notification of FoodShare Overissuance, a FoodShare Overissuance Worksheet and a repayment agreement must be issued to the household/recipient. *FoodShare Wisconsin Handbook*, §7.3.1.8. If the recipient does not make a payment or misses a payment, a dunning notice must be issued. *Id.*

The State of Wisconsin Public Assistance Collections Unit uses tax intercept from both state and federal tax refunds to recover overpayments from anyone who has become delinquent in repayment of an overissuance.

To use tax intercept, the person must have received three or more dunning notices and the debt must be:

1. Valid and legally enforceable.
2. State: All error types
Federal: All error types.
3. State: At least \$20;
Federal: At least \$25.
4. State: At least 30 days from notification of Overissuance;
Federal: Not more than 10 years past due from notification date except in fraud cases. There is no delinquency period for fraud.
5. Free from any current appeals.
6. Incurred by someone who has not filed bankruptcy, nor has their spouse.

FoodShare Wisconsin Handbook §7.3.2.10 Tax Intercept

In the case at hand, the agency properly sent the Petitioner a notice of overpayment, overpayment worksheets and three dunning notices. There is no record of the Petitioner making any payments toward the debt. As such, the agency properly referred the matter for tax intercept.

Wis. Stat., §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of FS, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at §49.85(3).

The Public Assistance Collections Unit properly notified the Petitioner of its intent to intercept her taxes and of her appeal rights.

Based upon the foregoing, it is found that the agency properly instituted a tax intercept to recoup a FoodShare overpayment from Petitioner.

At the hearing, the Petitioner indicated that she wished to appeal the agency's determination that an overpayment occurred. Petitioner argued that when her son applied for FoodShare benefits, he should have been considered a food unit of one person, because he was 22 years old. Regrettably, there is no jurisdiction to address the merits of Petitioner's argument regarding the overpayment determination.

The hearing right with regard to tax intercepts is described in Wis. Stat., §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... **may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.**

Emphasis added

Consequently, at a hearing concerning the use of a tax intercept to collect a FoodShare Overissuance, an appeal of the overpayment determination is not allowed, pursuant to Wis. Stat., §49.85(4)(b), because Petitioner had a prior right to appeal the determination.

Even if the determination of FoodShare Overissuance was a proper subject for a hearing concerning the use of a tax intercept to collect the overissuance, Petitioner's appeal regarding whether an overpayment occurred is untimely.

An appeal of a negative action, including a determination of an overissuance, must be filed within 90 days of the date of that action. 7 *CFR*, §273.15(g).

In this case, the date of action was August 22, 2013, the date the agency sent Petitioner the Notification of FoodShare Overissuance. (See Exhibit 2, pg. 13) As such, Petitioner needed to file her appeal of the overissuance determination by November 20, 2013. She did not file an appeal until February 25, 2014, well past the appeal deadline. As such, Petitioner's appeal of the determination of FoodShare Overissuance is untimely and there is no jurisdiction to hear the merits of that issue.

CONCLUSIONS OF LAW

The agency properly instituted a tax intercept.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 10th day of April, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 10, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit